



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0546]

RIN 1625-AA00

Safety Zone; Lake Erie Heritage Foundation, Battle of Lake Erie Reenactment; Lake Erie, Put-in-Bay, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone in the waters of Lake Erie in the vicinity of Put-In-Bay, OH.

This safety zone is intended to restrict vessels from a portion of Lake Erie during Battle of Lake Erie Reenactment near Put-In-Bay. This temporary safety zone is necessary to protect people and vessels from the hazards associated with this event.

DATES: This rule will be effective and enforced from 8 a.m. until 6 p.m. on September 2, 2013.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2013-0546 and are available online by going to [www.regulations.gov](http://www.regulations.gov), inserting USCG-2013-0546 in the "Keyword" box, and then clicking "search." They

are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground floor, Room W12-140, 1200 New Jersey Avenue SE, Washington DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, contact or email MST1 Ian M. Fallon, U.S. Coast Guard Marine Safety Unit Toledo, at (419)418-6036 or [Ian.M.Fallon@uscg.mil](mailto:Ian.M.Fallon@uscg.mil). If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
TFR	Temporary Final Rule

#### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The details of this emergent event were not received in sufficient time for the Coast Guard to solicit public comments before the start of the maritime event. Thus, waiting for a notice and comment period to run would inhibit the Coast Guard from protecting the public and vessels from the hazards associated with this marine event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the Federal Register. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

#### B. Basis and Purpose

To mitigate the dangers presented by this event, the Captain of the Port Detroit has determined that a safety zone is necessary. This safety zone will be effective and enforced in Lake Erie on Monday, September 2, 2013 from 8 a.m. until 6 p.m. while participants sail tall ships to the site of the Battle of Lake Erie Reenactment at position 41° 45' 24.0"N; 082° 57' 45.0"W. These coordinates are North American Datum of 1983 (NAD 83). Black powder charges will be fired from cannons as the ships

reenact the original battle fought in 1813. This reenactment is intended for public viewing, and as such poses a significant risk to public safety and property due to the proximity of spectator vessels. Thus, the Captain of the Port Detroit has determined it necessary to establish a safety zone centered on the battle reenactment support vessels to ensure the safety of persons and property and help minimize the associated risks.

#### C. Discussion of Rule

Because of the aforementioned safety concerns, the Captain of the Port Detroit has determined a temporary safety zone is necessary to ensure the safety of spectators and vessels during the maritime battle reenactment. The Battle of Lake Erie Reenactment safety zone will encompass all U.S. navigable waters of Lake Erie within a 500-yard radius of the reenactment support vessels located near position 41° 45' 24.0"N; 082° 57' 45.0"W (NAD 83).

This temporary rule creates a safety zone for each Battle of Lake Erie Reenactment support vessel. In a separate temporary rule (78 FR 44014, July 23, 2013), the Coast Guard created a safety zone around each Tall Ship during the Battle of Lake Erie Reenactment.

Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain

of the Port or his on-scene representative may be contacted via VHF Channel 16. All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the on-scene representative.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for

relatively short time. Also, the safety zone is designed to minimize their impact on navigable waters. Furthermore, restrictions on vessel movement within the area of the safety zone expected to be minimal. Under certain conditions, vessels may still transit through the safety zone when permitted by the Captain of the Port.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in designated portions of Lake Erie, OH from 8 a.m. through 6 p.m. on September 2, 2013.

The safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the safety zone will be activated, and thus subject to

enforcement, for only a short period of time. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, the Coast Guard will issue a Broadcast Notice to Mariners.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any

one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of

power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary safety zone that is less than one week in duration. Therefore, it is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. Nonetheless, we have prepared an environmental analysis checklist supporting this determination and Categorical Exclusion Determination which are both available in the docket where indicated under ADDRESSES. We seek any

comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0546 to read as follows:

§ 165.T09-0546 Safety Zone; Lake Erie Heritage Foundation, Battle of Lake Erie Reenactment; Lake Erie, Put-in-Bay, OH.

(a) Location. The following area is a temporary safety zone: All U.S. navigable waters of Lake Erie within a 500-yard radius of each Battle of Lake Erie Reenactment support vessel located near position 41°45'24"N, 082°57'45"W. All coordinates are North American Datum 1983 (NAD83).

(b) Effective and enforcement period. This section will be

effective and enforced from 8 a.m. through 6 p.m. on September 2, 2013.

(c) Regulations. (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within these safety zone is prohibited unless authorized by the Captain of the Port, Sector Detroit or his designated on-scene representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Detroit or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Detroit is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port, Sector Detroit to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Detroit or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Detroit or his on-scene representative may be contacted via VHF Channel 16 or at 313-568-

9464. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Detroit, or his on-scene representative.

Dated: August 15, 2013.

J. E. OGDEN  
Captain, U.S. Coast Guard  
Captain of the Port Detroit

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